

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

_____,
Plaintiff

vs

Civil Case No. _____

_____,
Defendant.

**STIPULATED QUALIFIED PROTECTIVE ORDER/
HEALTH INFORMATION PRIVACY AGREEMENT**

_____ (“Plaintiff”) and _____ (“Defendant”),

by and through their respective attorneys, hereby stipulate as follows:

(or)

_____ (“Claimant”) and _____

(“Respondent”), hereby agree as follows:

PURPOSE AND DEFINITIONS

The purpose of this Stipulated Qualified Protective Order/Health Information Privacy Agreement (“Order/Agreement”) is to facilitate the release and/or use of Plaintiff’s/Claimant’s health and medical information obtained with Plaintiff’s/Claimant’s HIPAA-compliant authorization and/or pursuant to Rule 26(a) of the WV Rules of Civil Procedure, and/or otherwise voluntarily produced and marked confidential (collectively and interchangeably “Health Information”), for purposes of the above-captioned case/claim, while protecting Plaintiff’s/Claimant’s privacy right under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) described in 45 C.F.R. & 164.512(e), by limiting the use of that Health

Information. Plaintiff's/Claimant's Health Information protected under this Order/Agreement shall not include any of Plaintiff's/Claimant's health or medical information that is otherwise publicly available.

STIPULATED ORDER/AGREEMENT

The parties stipulate/agree that Plaintiff's/Claimant's Health Information is protected, and, therefore, the disclosure and use of that Health Information shall be conducted pursuant to the following conditions:

A. Non-Disclosure Requirements: Except as provided herein, none of Plaintiff's/Claimant's Health Information obtained from any source shall be disclosed or used by anyone or by any entity for any purpose, without Plaintiff's/Claimant's explicit written consent.

1. Specifically Precluded Uses: It is specifically understood and agreed that none of Plaintiff's/Claimant's Health Information shall be used/disclosed for or to ISO (f.k.a. Insurance Services Office, Inc.) or any data base, index or similar compilation maintained by any person or entity. It is specifically understood and agreed, however, that the foregoing shall not prohibit Defendant/Respondent or his/her/its attorney or insurer from summarizing or compiling Plaintiff's/Claimant's Health Information for use in this claim only.

2. Specifically Allowable Uses, Disclosures, and Maintenance: It is specifically understood and agreed that Plaintiff's/Claimant's Health Information may be used, and/or disclosed, and/or maintained, without Plaintiff's/Claimant's consent as may be required to comply with state or federal laws/rules, and court, arbitrator, or administrative orders (including subpoenas duces tecum), and in relation to any claim, litigation, and/or proceeding arising out of the accident/incident of _____ ("Subject Accident"), including the

following:

- (a) for the subject case/claim, including for evaluation, investigation, negotiations, mediation, arbitration, litigation and/or claims handling;
- (b) for Defendant's/Respondent and/or his/her/their/its insurer's internal review and/or auditing, including the handling and disposition of any claim or matter related to the Subject Accident, communication between Defendant/Respondent and his/her/its insurer/underwriter/agent relating to the review and/or audit of claims for the purpose of setting premiums, calculating reserves, calculating loss experience, and/or procuring additional coverage of Defendant/Respondent, it being understood and agreed that information will not be used for any record compilation or database of Plaintiff's/ Claimant's claim history;
- (c) for external review and/or auditing, such as by reinsurers, the Insurance Commissioner, or external auditors;
- (d) for subrogation and reimbursement matters concerning the Subject Accident, such as subrogation or reimbursement claims for workers' compensation liens, medical liens, or other insurers' claims for subrogation, reimbursement, or contribution relating to the Subject Accident;
- (e) for fraud prevention, investigation, reporting, or action relating to the Subject Accident;

- (f) for any legally required reporting to governmental health or medical insurance organizations or their private contractors for Plaintiff's/ Claimant's health care and expenses related to the Subject Accident;
- (g) for statistical or analytical purposes, provided that Plaintiff's/ Claimant's personal identification information (e.g., name, specific street address, specific birth date, Social Security number, driver's license number) is not included in such review or use of Health Information; and
- (h) for any record keeping requirements or obligations relating to any of the foregoing, and pertaining to the Subject Accident.

The above-noted permissible uses, disclosures, and maintenance provisions are not intended to circumvent the intent of this Order/Agreement to protect Plaintiff's/Claimant's Health Information, and are not intended to unreasonably limit a party's or their counsel's or insurer's record-keeping obligation or requirements. Defendant/Respondent or his/her/its agents, attorneys, or insurers may request that additional permissible categories of uses, disclosures, or maintenance be added. Plaintiff/Claimant shall not unreasonably withhold consent, provided that the additional categories requested are consistent with the intent of this Order/Agreement.

B. Acknowledgment Requirement: In order to protect Plaintiff's Health Information under this Order, any counsel, employee of Defendant, or agent or employee of any recipient who intends to disclose Plaintiff's Health Information to anyone other than Plaintiff or Defendant, or their attorneys or employees ("Others"), for substantive purposes, shall first provide such Others a complete copy of this Order and shall obtain from such Others a signed Acknowledgment of the requirements of this Order in the form attached as Exhibit "A". With

respect to the Defendant's insurer, an Acknowledgment signed by an authorized representative shall suffice. A signed Acknowledgment is not required for disclosure to the Court, mediator, arbitrator, or jury as related to any case, claim, or proceeding arising out of the Subject Accident.

ALTERNATIVE PARAGRAPH B. FOR PRIVACY AGREEMENT:

B. Acknowledgment Requirements: In order to protect Claimant's Health Information under this Agreement, the undersigned insurer shall provide a complete copy of this Agreement and shall obtain a signed Acknowledgment of the requirements of this Agreement in the form attached as Exhibit "A" before disclosing Claimant's Health Information, for substantive purposes, to anyone other than Claimant, Respondent, or their attorneys or employees. Such signed Acknowledgment is not required for disclosure to the Court, mediator, arbitrator, or jury as related to any case, claim, or proceeding arising out of the Subject Accident.

C. Order Compelling Compliance with Subpoena Duces Tecum: In the event that a non-party refuses to release Plaintiff's/Claimant's Health Information, pursuant to a subpoena duces tecum, it is hereby **ORDERED** that such non-party produce the information identified in the subpoena duces tecum in its custody, possession, or control, to the counsel of record in this action or proceeding and/or their designated court reporting company, without the need for a separate Court Order or further authorizations signed by Plaintiff/Claimant. This paragraph shall not apply if any objection is timely raised or a motion to quash is timely filed.

D. Procedures for Filing Health Information: This Order/Agreement does not require or preclude the sealing of Health Information. In the event that Defendant/Respondent intends to file or disclose Plaintiff's/Claimant's Health Information in any public filing, he/she/it will give Plaintiff/Claimant ten (10) days notice of such intention, including identification of the

specific Health Information Defendant/Respondent intends to file or disclose. If Plaintiff/Claimant believes that the identified Health Information requires the additional protection of filing with the Court under seal, Plaintiff/Claimant shall identify the specific Health Information to Defendant/Respondent as soon as practicable, but no later than ten (10) days after such notice. If within two (2) weeks after Plaintiff's/ Claimant's identification the parties are unable to agree as to the extent of additional protection, if any, to be applied, Plaintiff/Claimant shall file an appropriate motion with the Court for a determination as to whether, and to what extent, the Health Information identified by Plaintiff/Claimant shall be sealed or otherwise further protected. The parties shall exercise good faith efforts to carry out the provisions of this Order/Agreement.

Health Information submitted for purposes of Arbitration, Mediation, and/or Evidence Rule 408 settlement communications is not public disclosure of Health Information.

E. Return or Destruction of All Copies: Within ninety (90) days after the final conclusion of the above-captioned case/claim by fully-executed non-litigation settlement agreement, filed stipulation of dismissal with prejudice, or final judgment (i.e., a judgment as to which the time for appeal has run), Defendant/Respondent, at his/her/its counsel's option, shall either return to Plaintiff's/Claimant's counsel or destroy Plaintiff'/Claimant's Health Information. Counsel for Defendant/Respondent shall provide written confirmation to Plaintiff's/ Claimant's counsel that counsel for Defendant/Respondent has destroyed and/or returned all copies of Plaintiff's /Claimant's Health Information, and made a good faith effort to confirm that Others have destroyed all copies of Plaintiff's /Claimant's Health Information.

This paragraph shall not apply to Health Information retained by insurance carriers, law firms, courts, and court reporters for the specifically allowable uses, disclosures, and maintenance stated in paragraph A.(2), above, and such Health Information need not be returned or destroyed.

F. Jurisdiction and Governing Law: The Court of the Circuit in which the above-captioned case/claim shall have jurisdiction to enforce and/or modify this Order/Agreement under West Virginia law. Subject to any contrary provision of West Virginia or federal law, no citation, contempt or other sanction shall be imposed pursuant to West Virginia law without a hearing and proof, to the satisfaction of the Court, of a material breach of this Order/Agreement.

G. Continuing Enforceability: All provisions of this Order/Agreement shall continue to be binding after the conclusion above-entitled case/claim, unless otherwise agreed by the parties or ordered by a Court.

H. Modification (For Agreement): Should this claim proceed to a lawsuit, the terms of this Agreement may be modified or superseded by a Stipulated Qualified Protective Order or Qualified Protective Order.

DATED: _____

Attorney for Defendant/Respondent

Attorney for Plaintiff/Claimant

APPROVED AND SO ORDERED:

Judge

EXHIBIT "A"

ACKNOWLEDGMENT OF STIPULATED QUALIFIED PROTECTIVE ORDER

OR

ACKNOWLEDGMENT OF HEALTH INFORMATION PRIVACY AGREEMENT

Re: _____ **v.** _____ ; **Civil Action/Claim No.:** _____

I have read and I understand the Stipulated Qualified Protective Order/Health Information Privacy Agreement ("Order/Agreement") regarding the use and disclosure of Plaintiff's/Claimant's Health Information. I understand that I (and my agents and employees) am/are bound to comply with the terms of the Order/Agreement.

DATED: _____

Signature

Name

Business Address

City, State Zip Code

Business Telephone Number